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Management goals

SEE: Public benefits.

Marinas and moorage facilities

WAC 332-30-106 Definitions.

All definitions in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). For the purpose of this chapter:

(11) "Covered moorage" means slips and mooring floats that are covered by a single roof with no dividing walls.

(15) "Enclosed moorage" means moorage that has completely enclosed roof, side and end walls similar to a car garage i.e. boathouse.

(43) "Open moorage" means moorage slips and mooring floats that have completely open sides and tops.

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(5) Shallow draft uses, such as barge terminals and marinas, shall be preferred over deep draft uses in areas requiring extensive maintenance dredging except the Columbia River.

(6) Multiple use of existing pier and wharf facilities will be encouraged, to reduce the need for adding new facilities.

(20) Anchorage areas on the beds of navigable waters may be designated by the department for mooring boats.

(21) Houseboats are considered to be a low priority use of aquatic land.

WAC 332-30-139: Marinas and moorages.

Marinas and moorage facilities

(1) Moorage facilities developed on aquatic lands should meet the following design criteria:

(a) Moorage shall be designed so as to be compatible with the local environment and to minimize adverse esthetic impacts.

(b) Open moorage is preferred in relatively undeveloped areas and locations where view preservation is desirable, and/or where leisure activities are prevalent.

(c) Covered moorage may be considered in highly developed areas and locations having a commercial environment.

(d) Enclosed moorage should be confined to areas of an industrial character where there is a minimum of esthetic concern.

(e) In general, covered moorage is preferred to enclosed moorage and open moorage is preferred to covered moorage.

(f) View encumbrance due to enclosed moorage shall be avoided in those areas where views are an important element in the local environment.

(g) In order to minimize the impact of moorage demand on natural shorelines, large marina developments in urban areas should be fostered in preference to numerous small marinas widely distributed.

(h) The use of floating breakwaters shall be considered as protective structures before using solid fills.

(i) Dry moorage facilities (stacked dry boat storage) shall be considered as an alternative to wet storage in those locations where such storage will:

(ii) Significantly reduce environmental or land use impacts within the water area of the immediate shoreline.

(iii) Reduce the need for expansion of existing wet storage when such expansion would significantly impact the environment or adjacent land use.

(2) Anchorages suitable for both residential and transient use will be identified and established by the department in appropriate locations so as to provide additional moorage space.

(3) Upland sewage disposal approved by local government and appropriate state agencies is required for all vessels used as a residence at a marina or other location.

(4) The department shall work with federal, state, local government agencies and other groups to determine acceptable locations for

marina development, properly distributed to meet projected public need for the period 1980 to 2010.

Discussion on marinas and moorage facilities

Marinas and moorage facilities (the terms are interchangeable) are water-dependent uses, and therefore are to be fostered on state-owned aquatic lands. However, marinas can cause greater environmental harm to state-owned aquatic lands than many people would expect. To properly protect aquatic resources, marina leases require special attention. SEE ALSO: Water-dependent uses; Use authorizations.

The siting and construction of a marina can cause extensive physical damage to the environment. Pilings, breakwaters, and bulkheads all cause major disruptions to aquatic habitat. Poorly designed dock construction can change wave and sediment patterns, leading to the loss of sand and beaches. Docks and boats shade the water, reducing aquatic vegetation. Marina slips are commonly leased to third parties which complicates efforts to monitor and prevent impacts.

Because of the risk of pollution from marinas, the Department of Health will establish a shellfish closure zone around marinas unless the marina has a pump-out facility and a watch person on-site to ensure that best management practices are followed. The Department of Natural Resources requires all new marinas to have pump-out facilities and to adopt best management practices to assure that no discharges occur, and will work with existing marinas to bring pump-out facilities on-line as soon as possible.

Open moorage is favored over covered or enclosed moorage, and covered moorage over enclosed. Covered and enclosed moorage cause greater environmental impacts because they shade the water. They also cause greater aesthetic impacts to surrounding communities.

A marina lease must include provisions for sufficient maneuvering room for entering and exiting the marina. The department does not guarantee that adjacent open-water areas will be available for access to marina facilities, unless these adjacent areas are under lease by the marina owner.

Like other leases, a lease for a marina is limited to 30 years. Occasionally, banks or other lenders who make loans to marina owners may request a secured interest in a marina lease. A secured interest essentially pre-approves the assignment of the lease to the lender in the event that the marina owner defaults on a loan. The department may approve a secured interest provided all financial, environmental, and other requirements and terms of the original lease would be upheld by the lender. SEE ALSO: Use authorizations.

MARINAS AND MOORAGE FACILITIES: CONDOMINIUMIZATION OF MARINA SLIPS

Discussion on marinas and moorage facilities: condominiumization of marina slips

Condominiumization occurs when the marina operator sells a marina slip “permanently” rather than collecting annual rent from the boat owner. Sometimes this occurs in conjunction with the sale of upland condominium apartments or townhouses.

The department strongly discourages the condominiumization of marinas. One reason for this position is the cost of processing requests to convert a marina to a condominium, and the subsequent increased cost to administer such leases. Additional concerns have centered around the value transfer that occurs between the marina owner and the slip purchaser. Typically, no additional value is received by the state in such transactions. Also, condominiumization often leads to conflicts and confusion over what the lessee or slip

buyer “owns,” as actual ownership of the land has not been transferred from the state to the lessee and cannot be transferred to the slip buyer.

The department should make it very clear that, regardless of any agreement between the marina operator and a boat owner, the department does not recognize any commitment of state-owned aquatic lands outside the terms of the lease, and does not in any case issue permanent leases. Furthermore, marina operators and other tenants do not have legal authority to sell state-owned aquatic land or to sub-lease the land for longer than the term of the lease. Therefore, once the lease expires, or if the lease is canceled early for any reason, the department will not recognize any claim by a boat owner or “slip owner” to the use of a condominiumized marina slip or to any portion of the state-owned aquatic lands in question. To avoid misunderstandings, the lessee is required to have pre-authorization by the department for any condominiumization, and must notify potential condominiumized slip buyers of the department's position on this matter.

Within these limits, a marina owner may wish to condominiumize “temporarily” for as long as the lease is in effect. The marina owner will remain responsible for all the terms of the lease, including any environmental or other protections.

If a condominiumized marina slip is intended for residential use, it must meet all requirements applicable to residential uses and to nonwater-dependent uses, in addition to meeting all requirements applicable to condominiumization. SEE ALSO: Residential uses; Nonwater-dependent uses.

MARINAS AND MOORAGE FACILITIES: RESIDENTIAL USES

Discussion on marinas and moorage facilities: residential uses

Residential uses within a marina are usually considered nonwater-dependent uses and, as such, are generally not authorized. The exception may be houseboats and structures similar to houseboats existing on or before October 1, 1984. Even if local regulations allow for residential uses in marinas or on aquatic lands, this does not mean they will be allowed by the department on state-owned aquatic lands. If residential uses are permitted in a marina, they must have upland sewage disposal approved by local government and appropriate state agencies, generally through a sewer hookup or documented use of a pump-out. Also, if permitted, the marina owner must pay full market rent for this nonwater-dependent portion of the marina. SEE ALSO: Residential uses; Nonwater-dependent uses.

MARINAS AND MOORAGE FACILITIES: SPILLS AND POLLUTION CONTROL

Discussion on marinas and moorage facilities: spills and pollution control

Taken as a whole, a marina can sometimes discharge more pollutants than an industrial outfall. Every marina lease requires a spill response plan for major and minor spills and a plan for source control, both to be properly operated and enforced by the marina owner. While marinas may not present as many potential chemical hazards as industrial uses, there are still opportunities for major spills, in particular from gas docks, boat painting or repair facilities, and sewage lines. In addition to major spills, marinas can experience constant low-level discharges of gasoline, motor oil, cleaners, paints, sewage and “gray water” (dirty water from sinks, showers and washing). Because occasional or recreational boaters are not required to take the major precautions that other users do to receive permits, they may not be as concerned or aware of pollution issues.

Copies of a spill response plan and source control plan must be included as exhibits in the lease. Plans provided by the marina for a regulatory agency may be satisfactory for the lease, but should be reviewed by department staff.

Memoranda of understanding/agreement

Discussion of memoranda of understanding/agreement

A memorandum of understanding (MOU), a memorandum of agreement (MOA) or an interagency agreement (IA) is a formal agreement between two or more parties (e.g., individuals, government agencies, tribal governments) which describes how the parties will work together to create a new process or improve an existing one. Sometimes an MOA/MOU will state agreed-upon assumptions and guidelines.

Agreements between the department and other entities obligate the department by making commitments and formalizing performance expectations. Agreements can provide benefits to the department. Improper agreements can cause problems such as reducing management options, incorrectly articulating the department's intent, and unnecessarily increasing the department's liability. It is important that any agreement appropriately reflect department policy, meet legal requirements, and accurately reflect department commitments.

It is the department's policy to limit the number of formal agreements to those which are absolutely necessary and which can be effectively implemented. (Policy PO04-001) Therefore, whenever possible, letters should be used to articulate most agreements. More formal agreements should be used only for specific purposes where the parties are creating obligations, the issues are particularly complex, or

there are numerous parties involved and there is a high probability for misunderstanding.

The department has entered into numerous agreements which facilitate the management of state-owned aquatic lands and the department's relationship with other entities. Some important existing agreements include:

Inter-Agency Permit Streamlining Document on Shellfish and Domestic Wastewater Discharge Outfall Projects

This agreement, prepared in 1995 between the department and the departments of Health, Fish and Wildlife, and Ecology, represents the efforts of these agencies to improve the process by which domestic wastewater outfall projects in marine waters are reviewed and approved. A major part of this process is ensuring that impacts to shellfish are minimized and that unavoidable impacts are mitigated and compensated for, if appropriate.

One of the main goals of this agreement is to reduce impacts to shellfish populations and to improve and increase harvestable areas and quantities of shellfish. The MOA does not address private, industrial or domestic outfalls in fresh waters. After the MOA was complete, two separate guidance documents were developed on Domestic Waste Outfall Siting in Marine Waters and Municipal Outfall Siting.

Contaminated Sediment Source Control, Cleanup and Disposal

The purpose of this MOA, completed in 1992 between the department and the Department of Ecology, is to ensure integration of the state's regulatory and proprietary authorities for the prevention, investigation, and cleanup of contaminated sediment sites. The agreement is designed to establish clear and simple

procedures to ensure continued communication and cooperation between Ecology and the department.

Interagency/Intergovernmental Agreement on a Cooperative Sediment Management Program

This agreement between the department, the Department of Ecology, the Puget Sound Water Quality Action Team, the Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers established a coordinated interagency program to address sediment management issues, emphasizing shared responsibilities and resources.

Sediment agreement with the Tulalip Tribe

The primary purpose of this MOU between the department, EPA, and the Tulalip Tribe is to facilitate the start of cleanup activities at the Tulalip Superfund site. The main issues revolve around the quantity of state-owned sediments to be used in the cleanup, the sites and sources of sediment, and the type of liability relief to be provided.

State liability at federally listed "Superfund" (CERCLA) sites (Framework Agreement)

The department and EPA have established a framework agreement on resolving state liability at federally listed "Superfund" (CERCLA) sites in Puget Sound.

Implementation of watershed planning

This is an MOU on implementation of watershed planning between the department; the state departments of Agriculture, Community Trade and Economic Development, Ecology, Fish and Wildlife, Health, and Transportation; the Conservation Commission; the Interagency Committee for Outdoor Recreation; and the Puget Sound Water Quality Action Team. This MOU

clarifies the roles and responsibilities of the various state agencies under watershed planning and salmon recovery at the local level.

Copies of these memoranda are available from the Division.

Mining and prospecting

RCW 79.90.330: Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands.

The department of natural resources may issue permits and leases for prospecting, placer mining contracts, and contracts for the mining of valuable minerals and specific materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any aquatic lands belonging to the state, or which have been sold and the minerals thereon reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. The procedures contained at RCW 79.01.616 through 79.01.651, inclusive, shall apply thereto.

RCW 79.90.500: Aquatic lands--Rents for nonwater-dependent uses--Rents and fees for the recovery of mineral or geothermal resources.

Leases for nonwater-dependent uses of state-owned aquatic lands shall be charged the fair market rental value of the leased lands, determined in accordance with appraisal techniques specified by rule. However, rents for nonwater-dependent uses shall always be more than the amount that would be charged as rent for a water-dependent use of the same parcel. Rents and fees for the mining or other recovery of mineral or geothermal resources shall be established through competitive bidding, negotiations, or as otherwise provided by statute.

Discussion on mining and prospecting

The department does not commonly grant authorizations for mining or prospecting, in part because we are not commonly asked. When asked, the procedures in RCW 79.01.616

through 79.01.651, which are the department's general mining statutes, apply. The most important phrase in these is found in RCW 79.01.620, which states "the department may reject an application for a mineral prospecting lease when the department determines rejection to be in the best interests of the state."

The department usually will not grant authorization for recreational prospecting on state-owned aquatic lands, because of the likely environmental impacts and the few public benefits. Commercial prospecting or mining would require significant measures to avoid potential environmental impacts. SEE ALSO: Environmental protection; Commercial and industrial uses.

This section on mining and prospecting does not apply to harvesting of rock, gravel, sand, and silt. SEE ALSO: Sand and gravel.

Mitigation

[Guidance on mitigation is not yet included, pending approval by Executive Management.]

Mooring buoys and swim rafts

WAC 332-30-122: Aquatic land use authorization.

All requirements in this section shall apply to the department. Subsection (2) of this section (except subsection (2)(a)(iii) and (b)(iii) of this section), subsections (3)(a), and (4)(a) shall apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) General requirements.

(b) Determination of the area encumbered by an authorization for use shall be made by the department based on the impact to public use and subsequent management of any remaining unencumbered public land.

(ii) Areas for individual mooring buoys will be a circle with a radius equal to the expected swing of the vessel or object moored. Only the area encumbered at any given point in time shall be used to calculate any rentals due.

WAC 332-30-148: Swim rafts and mooring buoys.

(1) Swim rafts or mooring buoys will not be authorized where such structures will interfere with heavily traveled routes for watercraft, commercial fishing areas or on designated public use - wilderness beaches.

(2) Swim rafts or mooring buoys may be authorized on aquatic lands shoreward of the -3 fathom contour or within 200 feet of extreme low water or line of navigability whichever is appropriate. The placement of rafts and buoys beyond the -3 fathom contour or 200 feet will be evaluated on a case by case basis.

(3) No more than one structure may be installed for each ownership beyond extreme low water or line of navigability. However, ownerships exceeding 200 feet as measured along the shoreline may be permitted more installations on a case by case basis.

(4) Swim rafts or buoys must float at least 12" above the water and be a light or bright color.

(5) Mooring buoys may be authorized beyond the limits described above on land designated by the department for anchorages.

Discussion on mooring buoys and swim rafts

While mooring buoys may generally have less environmental impact than a major permanent structure, staff must still address the possible effects of the mooring on the bedlands, especially on any aquatic vegetation that might be damaged by the buoy line, and the possibility of sewage or gray water disposal from moored vessels. Also, the department must ensure that the placement of mooring buoys allows for navigation to and past the buoys. Mooring buoys should be designed so they can be completely removed.

Placement of mooring buoys or swim rafts require a use authorization. The area to be leased for a mooring buoy is a

circle with a radius equal to the expected swing of the vessel or object moored. SEE ALSO: Use authorizations.

Multiple use

RCW 79.68.090: Multiple use land resource allocation plan-Adoption-Factors considered.

The department of natural resources may adopt a multiple use land resource allocation plan for all or portions of the lands under its jurisdiction providing for the identification and establishment of areas of land uses and identifying those uses which are best suited to achieve the purposes of RCW 79.01.128, 79.44.003 and this chapter. Such plans shall take into consideration the various ecological conditions, elevations, soils, natural features, vegetative cover, climate, geographical location, values, public use potential, accessibility, economic uses, recreational potentials, local and regional land use plans or zones, local, regional, state and federal comprehensive land use plans or studies, and all other factors necessary to achieve the purposes of RCW 79.01.128, 79.44.003 and this chapter.

WAC 332-30-106 Definitions.

(39) "Multiple use management" means a management philosophy which seeks to insure that several uses or activities can occur at the same place at the same time. The mechanism involves identification of the primary use of the land with provisions such as performance standards to permit compatible secondary uses to occur.

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(6) Multiple use of existing pier and wharf facilities will be encouraged, to reduce the need for adding new facilities.

Discussion on multiple use

Whenever practical, the department should encourage multiple uses of state-owned aquatic lands. The goal is that, as often as possible, state-owned aquatic lands should provide and be used for more than one purpose and more than one public benefit. While not every use of state-owned aquatic lands can provide all public benefits, all these benefits should be explicitly considered when deciding on a proposed use of these lands. SEE ALSO: Public benefits.

When reviewing a proposed use authorization, staff should look for ways the proposal can be adjusted to allow both the primary use and "compatible secondary uses" to occur. SEE ALSO: Use authorizations.